

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4409 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKBHAI SHANKERLAL

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners No. 1-2
MS DS PANDIT, AGP for Respondent No. 1
SERVED BY AFFIX.-(R) for Respondent No. 2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 13/12/2001

ORAL JUDGEMENT

1. The petitioners purchased the lands in question
from respondent no.2 by two separate sale deeds dated
14th October, 1980 and mutation entries were made in the

revenue record on 17th November, 1980 and they were certified by the Circle Officer on 07th February, 1981. On 23rd December, 1985, the Mamlatdar and A.L.T., Daskroi issued a notice to respondent no.2 under Section 84C(1) of the Bombay Tenancy and Agricultural Lands Act. The Mamlatdar, thereafter, issued a notice under Section 84C(1) of the Act against the petitioners on 20th April, 1987. However, the Mamlatdar dropped the proceedings by his order dated 10th February, 1988 by holding that there had been no breach of the provisions of the Tenancy Act. It appears that the respondent no.2 filed an appeal against the said order and that the Deputy Collector informed him on 4th July, 1988 that the appeal filed by him was barred by time and, therefore, it was not entertained. However, the Deputy Collector purported to exercise suo moto revisional powers under Section 76-A of the Tenancy Act and issued notice to the petitioners and respondent no.1 on 27th October, 1994 i.e. six years after the order of the Mamlatdar which was passed on 10th February, 1988. The petitioners, apart from supporting the order of the Mamlatdar on merits, also raised the contention that proceedings under Section 76-A cannot be initiated after the expiry of one year from the date of the order of the Mamlatdar in view of the proviso to the said Section. However, the Deputy Collector overruled the said objection and set aside the order of the Mamlatdar on merits. The Revenue Tribunal, by its order dated 28th April, 1999 dismissed the revision application of the petitioners and confirmed the order of the Deputy Collector.

2. The petitioners have, therefore, filed this petition under Articles 226 and 227 of the Constitution challenging the said orders of the Deputy Collector and the Revenue Tribunal.

3. The petitioners have raised the contention that the finding of the Deputy Collector that there was a breach of the provisions of Tenancy Act is erroneous in law. However, it is not necessary to go into that question since the second contention raised by the petitioners that it was not open to the Deputy Collector to initiate proceedings under Section 76-A after the expiry of one year from the date of the order of the Mamlatdar is supported by the decision of a Division Bench of this court in *Thakorbhai Tribhovandas Rao and Others vs. The State of Gujarat and Others* [1995 (1) G.L.H. 758]. In the said decision, it was held that no record shall be called for by the Collector after the expiry of one year from the date of the order made by the Mamlatdar for the purpose of satisfying himself as to the

legality or propriety of such order or as to the regularity of the proceedings of the Mamlatdar and the proviso to the said Section would be applicable even in a case where a Reference is made by the State Government requiring the Collector to call for the record and proceedings. It was further held that the limitation prescribed by the proviso for the exercise of the revisional powers beyond the expiry of one year from the date of the order is clear and explicit and the Collector will have no revisional power to be exercised beyond the period of one year. In view of this binding decision of the Division Bench, it has to be held that the Deputy Collector was not justified in initiating the proceedings under Section 76-A after the expiry of the period of one year from the date of the order of the Mamlatdar. This petition is, therefore, allowed and the impugned orders of the Deputy Collector and the Revenue Tribunal are set aside and the order of the Mamlatdar is restored. Rule made absolute with no order as to costs.

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